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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Patrick Montoya

AUT-10002/36

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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT

PAPER NUMBER

3624

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/826,786	<b>Applicant(s)</b> MONTOKA, PATRICK	
	<b>Examiner</b> JOHNNA R. LOFTIS	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-7,9,10,15,16 and 31-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-7,9,10,15,16 and 31-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/12/10 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3 and 4 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is not clear whether the collected survey results are related or unrelated to the survey questionnaire. Claim 1 states the results are unrelated to the survey questionnaire. Claims 3 and 4 state the results are related to the survey questionnaire. Clarification must be made for examiner to get a full understanding of what is intended by the claim language.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 38-51 rejected under 35 U.S.C. 101 because they are directed toward non-statutory subject matter. The claims are directed to software per se. Claim 38 recites several “systems” that are construed to be software or computer programs. The current claim language does not specify the software is part of or statically embodied in a physical medium. Software not statically embodied on a physical medium are considered descriptive material per se. As drafted, the claim fails to define any structural and functional interrelationships between the software per se and other elements of the invention that permit the software’s function to be realized. (See MPEP § 2106.01 Section I).

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 3, 5, 9, 10, 15, and 16 rejected under 35 U.S.C. 102(e) as being anticipated by West et al et al, US 6,175,833.

As per claim 32, West et al teaches providing a web site with hardware and software server components, the components including non-standard or specialized components that perform services for web site users, including a questionnaire database and a survey answers database storing previously collected survey results, and wherein the previously collected survey results include a composite survey response ( column 1, website; column 4, lines 16-27 – online voting; inherently the system contains voting results for all surveys); establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response (column 3, lines 38-63 – computer network system; column 4, lines 16-27 – online voting; inherently the system contains voting results for all surveys); receiving at the web site a request from the client for the previously collected survey results (column 9, lines 19-36 – user requests story along with survey results; column 7, line 59 – column 8, line 60); providing the client with a survey questionnaire from the survey collector (column 7, line 54 – column 8 line 67 – user is presented a survey if the user has not already submitted a vote); providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client, the results including a composite survey response that is unrelated to the survey questionnaire (column 9, lines 19-36 – user must first vote before viewing survey results; column 4, lines 16-27 – online voting; inherently the system contains voting results for all surveys); rejecting the client's

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request for the survey results if a response to the survey questionnaire is not received from the client (column 9, lines 19-36 – inherently if the user does not vote, he/she does not gain access to the survey results).

As per claim 3, West et al teaches relating the survey questionnaire by subject matter to the previously collected survey results (column 8, lines 41-65 – survey ID used to correlate with user's global unique identifier (GUID)).

As per claim 5, West et al teaches providing the client with the survey questionnaire includes requesting the identifying indicia from the client (column 8, lines 41-65 – survey ID used to correlate with user's global unique identifier (GUID)).

As per claim 9, West et al teaches receiving by the survey collector identifying indicia from the client (column 5, lines 47-50 and column 6, lines 28-38 – obtains user's global unique identifier; column 8, lines 41-65 – survey ID used to correlate with user's global unique identifier (GUID)); and correlating the identifying indicia with a database to determine if a relationship exists between the identifying indicia and the subject matter of the survey questionnaire (column 5, lines 47-50 and column 6, lines 28-38 – obtains user's global unique identifier; column 8, lines 41-65 – survey ID used to correlate with user's global unique identifier (GUID)).

As per claim 10, West et al teaches receiving by the survey collector identifying indicia from the client (column 5, lines 47-50 and column 6, lines 28-38 – obtains user's global unique identifier); and correlating the identifying indicia with a database to determine determining if a relationship exists between the identifying indicia and the client (column 5, lines 47-50 and

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column 6, lines 28-48 – obtains user's global unique identifier determines whether user has voted previously).

As per claim 15, West et al teaches the client is denied access to the previously collected survey results if no relationship is found between the indicia and the client (column 9, lines 19-36 – inherently if the user does not vote, he/she does not gain access to the survey results).

As per claim 16, West et al teaches assimilating the survey response into a composite survey response (column 3, lines 38-63 – computer network system; column 4, lines 16-27 – online voting; inherently the system contains voting results for all surveys).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 6, and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over West et al, US 6,175,833.

As per claim 4, West et al teaches the creation of surveys (column 5, lines 1-22) but does not explicitly teach the request for previously collected survey results and the survey questionnaire are related to automotive vehicles; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same

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regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP . 2106.

As per claim 6, West et al teaches identifying indicia (column 5, lines 47-50 and column 6, lines 28-38 – obtains user's global unique identifier), but does not explicitly teach the indicia is a product identification number; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP . 2106.

As per claim 7, West et al teaches identifying indicia (column 5, lines 47-50 and column 6, lines 28-38 – obtains user's global unique identifier), but does not explicitly teach the indicia is a VIN number; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP . 2106.



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10. Claim 31 rejected under 35 U.S.C. 103(a) as being unpatentable over West et al, US 6,175,833, further in view of Stiles, US 6,330,608.

As per claim 31, West et al teaches receiving by the survey collector identifying indicia from the client and only providing survey results if the user's global unique identifier is correlated and shows the user has previously voted (column 5, lines 47-50 and column 6, lines 28-48 – obtains user's global unique identifier), but does not explicitly teach correlating the identifying indicia with a database to determine if the client is a registered member and providing access only if the client is also a registered member. Stiles teaches a method and system for registering modules or service providers requesting access to a computer system, its hardware and/or its software wherein only registered modules will access to the computer system. It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the survey system of West et al the registration function as taught by Stiles since the claimed invention is merely a combination of old elements, and in combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

11. Claims 33-51 are directed to substantially the same limitations as already addressed by the rejections of claims 3-7, 9, 10, 15, 16, 31 and 32, above, therefore the same art and rationale apply.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Johnna R Loftis/  
Examiner, Art Unit 3624